

Remarks/Arguments

Responsive to the Office Action of February 26, 2004, Applicants have corrected the numbering of the claims. Claims 1 through 12 are now present in the application. This Amendment is believed to have corrected the defects in the previously filed Amendment which was deemed not fully responsive.

Claims 1-12 are pending in this Application. In the Office Action mailed on October 08, 2003, the Examiner:

1. rejected claims 1-3 and 5-8 under 35 U.S.C. § 102 (b) as being anticipated by Liu et. al. (US 5,047,252);
2. rejected claims 1-3 and 5 under 35 U.S.C. § 102 (b) as being anticipated by Syroka et. al. (US 4,141,997);
3. rejected claims 4 and 9-12 under 35 U.S.C. § 103 (a) as being obvious over Liu et. al. (US 5,047,252) in view of official notice;

Applicants respectfully address each of the Examiner's rejections as set forth below.

Claim Rejections - Claims 1-3 and 5-8 under 35 U.S.C. §102 (b)

The Examiner rejected claims 1-3 and 5-8 under 35 U.S.C. §102 as being anticipated by Liu et. al. US Patent 5,047,252. The Examiner stated Liu et al. teaches a container arrangement of condiment packets (coffee), comprising a container having a top, a bottom and an outer peripheral wall (col. 3 lines 11-13), a plurality of packets arranged in said container generally like a spokes on a wheel and being maintained in said generally spokes-on-a-wheel arrangement by said outer peripheral wall of said container. (See Figure 1-14B embodiments).

Applicants respectfully submit that the Liu et al. reference does not anticipate Applicants' amended Claim 1, 5 and 6 or dependent Claims 2-4 and 7-8, because the Liu et al. reference does not identically disclose Applicants' invention as claimed.

The Liu et al. reference does not identically disclose Applicants' invention as amended because *inter alia* it does not teach the use of nonporous packets. The Liu et al. reference does teach the use of a porous beverage infusion device with a conventional coffee cup or mug having a bottom and a peripheral wall. The Liu et al. reference does not teach a container arrangement of condiment packets, comprising a container having a top, a bottom and an outer peripheral wall with a plurality of nonporous packets arranged in the container generally like a spokes on a wheel. The Liu et al. reference does not teach a plurality of nonporous packets arranged and being maintained in said generally spokes-on-a-wheel arrangement by said outer peripheral wall of said container.

The Liu et al. reference and the instant invention are different; each addresses a different need. The Liu et. al. reference is not suited to address an arrangement and storage of condiment packets generally in a spokes on a wheel arrangement. Furthermore, the Liu et. al. reference does not identically disclose the claimed invention. Applicants respectfully request the Examiner withdraw the rejection under 35 U.S.C. §102(b).

The Examiner rejected claims 1-3 and 5 under 35 U.S.C. §102(b) as being anticipated by Syroka et. al. US Patent 4,141,997. The Examiner stated Syroka et al. teaches a container arrangement of condiment packets, comprising a container having a top, a bottom and an outer peripheral wall, a plurality of packets arranged in said container generally like spokes on a wheel and being maintained in said generally spokes-on-a-wheel arrangement by said outer peripheral wall of said container. (see Figure 1 embodiment).

Applicants respectfully submit that Syroka et al. does not anticipate Applicants' claims 1-3 and 5 as amended, because the Syroka et al. reference does not identically disclose Applicants' claimed invention.

The Syroka et. al. reference relates to a beverage infusion device for preparing a cup of an infusible beverage such as coffee and tea. The Syroka et. al. reference disclosure is unsuitable for arranging and packing individual serving condiment packets in a spokes on a wheel arrangement into a container having a top, a bottom and an outer peripheral wall. Consequently the Syroka et. al. reference is not relevant to the instant invention.

Applicants respectfully disagree with the Examiner's interpretation of the Syroka et. al. reference. The Syroka et. al. reference discloses an a double compartment bag constructed of porous material for containing a beverage infusion commodity and an inverted U-shaped resilient clip to clamp the bag against the interior wall of the cup having a bottom and a peripheral wall. The Syroka et al. reference does not teach a container arrangement of condiment nonporous packets, comprising a container having a top, a bottom and an outer peripheral wall with a plurality of packets arranged and maintained in said generally spokes-on-a-wheel arrangement by the outer peripheral wall of the container.

Furthermore, the Syroka et. al. reference discloses a beverage infusion device which uses a clip that attaches to the side of a conventional cup and to the double compartment bag and produces a generally V-shaped configuration such as that illustrated in FIG. 2 of the Syroka et. al. reference. (col. 3 ln. 8-9; Fig. 2). Therefore the arrangement of the double compartment bags disclosed in the Syroka et. al. reference does not produce the spokes on a wheel arrangement within a container.

The Syroka et al. reference and the instant invention are different; each addresses a different need. The Syroka et al. reference is not suited to address an arrangement of condiment packets generally in a spokes on a wheel arrangement within a container having a top, a bottom and an outer peripheral wall.

The Syroka et. al. reference does not teach each and every element of Applicants' claimed invention. Applicants respectfully submit that amended claims 1-3 and 5 are not anticipated by the Syroka et al. reference and Applicants respectfully request the Examiner withdraw the rejection under 35 U.S.C. §102(b).

Claim Rejections - 35 U.S.C. §103(a) - Claims 4, 9-12

The Examiner rejected claims 4 and 9 under U.S.C. § 103(a) as being obvious over US Patent 5,047,252 to Liu et. al. in view of official notice taken that it is old and conventional to make containers and packages from transparent material so that the contents are visible from the outside.

The Examiner rejects claims 4 and 9 under 35 U.S.C. § 103(a) as being unpatentable over the Liu et. al. reference in view of official notice. The Examiner states that it is old and conventional to make containers and packages from transparent material so that the contents are visible from the outside. The Examiner goes on to state that it is within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice. Neither the Liu et. al. reference, the official notice, nor their combination disclose, teach or suggest the invention of claim 4 and 9 of the present invention.

The inventions disclosed in the cited references are not suited to address the problems addressed by the instant invention. The Liu et. al. reference discussed *infra*, discloses

an infusion device for preparing an individual cup of an infusible beverage through the rotation of a shaft with porous pouches secured to the shaft creating a centrifugal flow pattern in water. The Liu et. al. reference discloses a rotatable, hand held shaft, secured with one or more porous pouches containing infusible material extending radially outwardly from the shaft and dimensioned to fit within a conventional beverage cup or mug. The Liu et al. reference discloses a conventional coffee cup or mug having a bottom and a peripheral wall. The Liu et al. reference does not teach a container arrangement of condiment packets, comprising a container having a top, a bottom and an outer peripheral wall with a plurality of packets arranged in the container generally like spokes on a wheel. Furthermore, the Liu et. al. reference does not teach or suggest packets arranged in said container generally like spokes on a wheel and being maintained in said generally spokes-on-a-wheel arrangement by said outer peripheral wall of said container. The Liu et. al. reference discloses a shaft secured to porous pouches dimensioned to fit within a beverage cup and to be freely rotatable. Therefore a person of ordinary skill in the art would not look to the Liu et. al. reference to address the problem the instant invention addresses.

The MPEP also states that, "to rely on a reference under 35 USC 103 , it must be analogous prior art." MPEP 2141.01(a). Applicants submit that the Liu et. al. reference of an infusion device for preparing an individual cup of an infusible beverage is not in the same field as the Applicants' nor is the reference reasonably pertinent to the problem the instant invention addresses. The Liu et. al. reference is not analogous art. It is not obvious for a person of ordinary skill in the art to look to the Lui et. al. reference relating to an infusible beverage to solve the problem of arranging and packing individual serving condiment packets into a container.

The Examiner states that it is old and conventional to make containers and packages from transparent material so that the contents are visible from the outside. The invention and the prior art references must be considered as a whole. MPEP § 2141.02. The MPEP states, "it is not whether the differences themselves would have been obvious to try, but whether the claimed invention as a whole would have been obvious." (Emphasis in original) *Stratoflex, Inc. v. Aeroquip Corp.* 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.* 713 F.2d 782, 218 USPQ 608 (Fed. Cir. 1983). MPEP § 2141.02.

The Action does no more than merely take general notions using transparent materials having no suggestion or motivation in the references and reaches conclusions that are not supported in any of the references as relates to the present claims. The rejection based on "transparency" fails to acknowledge the other elements of the present invention. Obviousness has not been established as the cited references lack support for the teaching of all of the elements of the present invention in all of the rejected claims, lacks any suggestion of reasonable expectation of success, and lacks the motivation or suggestion to combine the missing elements.

Accordingly, claims 4 and 9 are not anticipated by, or rendered obvious from either the Liu et. al. reference or the official notice or their combination. As a result, the containered arrangement of condiment packets would not have been obvious to one of ordinary skill in the art. Therefore, the 35 U.S.C. §103 rejection to claims 4 and 9 should be withdrawn and the claims allowed. Reconsideration is respectfully requested.

The Examiner rejected claims 10-12 under U.S.C. § 103(a) as being obvious matter of design choice to modify the area of the size of the packets and container, since such a modification would have

involved a mere change in the size and shape of a component.

The Examiner rejects claims 10-12 under 35 U.S.C. § 103(a) as being unpatentable over Liu et. al. The Examiner states that, it would have been an obvious matter of design choice to modify the area of the size of the packets and container, since such modification would have involved a mere change in the size and shape of a component. Neither the Liu et. al. reference discussed *infra*, the Examiner's statements, nor their combination disclose, teach or suggest the invention of claims 10-12 of the present invention.

Applicants respectfully disagree with the Examiners postulation that, it would have been an obvious matter of design choice to modify the area of the size of the packets and container.

Furthermore, as stated in *Ex parte Haymond* 41 U.S.P.Q.2d 1217, 1220 (B.P.A.I. 1996), "we note that it is impermissible to use the claimed invention as an instruction manual or 'template' to piece together isolated disclosures and teachings of the prior art so that the claimed invention may be rendered obvious." The Board may clear that "a rejection based on Section 103 must rest on a factual basis, with the facts being interpreted without hindsight reconstruction of the invention from the prior art." Furthermore, the Board explicitly states "the examiner has the initial duty of supplying the factual basis for the rejection he advances. He may not, because he doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis." See *In re Warner*, 379 F.2d 1011, 1017, 154 U.S.P.Q. 173, 178 (C.C.P.A. 1967), cert. denied, 389 U.S. 1057 (1968).

The Examiner refers to one piece of non-analogous art, the Liu et. al. reference discussed *supra*, that addresses an

infusion device for preparing an infusible beverage through the rotation of a shaft with porous pouches secured to the shaft and adds the unsupported proposition that changing the size and shape of a component renders the present invention obvious. There is simply no teaching of the present invention.

Obviousness has not been established because the cited do not teach of all of the elements of the present invention in each of the rejected claims. Additionally there is no suggestion of a expectation of success, or the motivation or suggestion to combine the elements.

Accordingly, claims 10-12 are not anticipated by, or rendered obvious from either the Liu et. al. reference or the official notice or their combination. As a result, the containered arrangement of condiment packets would not have been obvious to one of ordinary skill in the art. Therefore, the 35 U.S.C. §103 rejection to claims 4 and 9 should be withdrawn and the claims allowed. Reconsideration is respectfully requested.

Conclusion

In light of the amendments, remarks and arguments presented above, Applicants respectfully submits that the claims in the Application are in condition for allowance. Favorable consideration and allowance of the pending claims 1-12 is therefore respectfully requested.

Applicants hereby authorize the Commissioner to charge any fees (including the fee for a one-month extension of time), other than the issue fees, that may be required by this paper to Deposit Account 07-0153.

If the Examiner has any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below.

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